BEFORE THE BOARD OF PUBLIC UTILITIES
OF THE STATE OF NEW JERSEY
DOCKET NO. TO02060320

Petition of Global NAPs, Inc.
For Arbitration Pursuant to
Section 252 of the
Telecommunications Act of
1996 to Establish an
Interconnection Agreement
with Verizon New Jersey, Inc.,
f/k/a Bell Atlantic --
New Jersey,

INTERIM DECISION

ARBITRATOR'S RECOMMENDED DECISION TO
THE STATE OF NEW JERSEY BOARD OF PUBLIC UTILITIES

INTRODUCTION & BACKGROUND

The Telecommunications Act of 1996, 47 U.S.C. 151, et. seq. (the "96 Act") sets forth a national policy framework to establish a competitive and deregulated telecommunications environment. The Act imposes on incumbent local exchange carriers ("ILECs") the duty to negotiate in good faith with carriers requesting interconnection (competitive local exchange carriers or "CLECs") the terms and conditions of agreements to fulfill their obligations under the 96 Act, including, but not limited to, their duties to provide interconnection, unbundled access, resale, collocation of facilities, number portability, dialing parity, access to rights of way and reciprocal compensation. 47 U.S.C. §251. Pursuant to the Act, Congress has delegated to the States the responsibility to resolve disputes regarding terms and conditions of interconnection agreements between telecommunication providers through mediation and arbitration, and to

review and approve or reject such negotiated or arbitrated interconnection agreements. 47 U.S.C. §252(e)(1).

If the ILEC and CLEC can agree on **all** issues, binding agreements may be negotiated and entered into without regard to the standards set forth in subsections 251(b) and (c). 47 U.S.C. §252(a)(1).

Pursuant to the **96** Act, and during the period from the 135'' to the 160th day after the date on which an ILEC receives a request for interconnection, either party to a negotiation may petition The State of New Jersey Board of Public Utilities ("BPU") to arbitrate any open issues. 47 U.S.C. §252(b)(1). The arbitrator decides the open issues and will submit that decision to the parties, which in turn will submit a completed interconnection agreement to the BPU for review.

Section 252(e) requires that all interconnection agreements, whether reached through negotiation or arbitration, be submitted to the BPU for approval. The BPU must approve or reject the agreement with written findings as to any deficiencies. 47 U.S.C. §252(e)(1).

The BPU may only reject an agreement or any portion thereof adopted by arbitration if it finds that the agreement does not meet the requirements of section 251 (the interconnection checklist), or the pricing standards set forth in subsection (d) of section 252. 47 U.S.C. §252(e)(2)(B).

In its most recent decision involving the **96** Act, the United States Supreme Court said:

> The **1996** Act both prohibits state and local regulation that impedes the provision of "telecommunicationsservice," § 253(a), n12 and obligates incumbent carriers to allow competitors to enter their local markets, §251(c). Section 25 1(c) addresses the practical difficulties of fostering local competition by recognizing three strategies that a potential competitor may pursue. First, a competitor entering the market (a "requesting" carrier, § 251(c)(2)), may decide to engage in pure facilities-based competition, that is, to build its own network to replace or supplement the network of the incumbent. If an entrant takes this course, the Act obligates the incumbent to "interconnect" the competitor's facilities to its own network to whatever extent is necessary to allow the competitor's facilities to operate. §§ 251(a) and (c)(2). At the other end of the spectrum, the statute permits an

entrant to skip construction and instead simply to buy and resell "telecommunications service," which the incumbent has a duty to **sell** at wholesale. §§ 251(b)(1) and (c)(4). Between these extremes, an entering competitor may choose to **lease** certain of **an** incumbent's "network elements," n13 which the incumbent has a duty to provide "on **an** unbundled basis" at terms that are "just, reasonable, and nondiscriminatory." § 251(c)(3). ***Verizon Communications, Inc. v F.C.C.,*** 535 U.S. 467, 122 S. Ct. 1646, 1662, 152 L. Ed. 2d 701,725 (2002).

In ***MCI TelecommunicationsCorp. v Bell Atlantic-Pennsylvania,*** 271 F 3d. 491,497 (3rd. Cir. 2001), the Third Circuit said:

In passing the Telecommunications Act of 1996, Congress altered the regulatory scheme for local telephone service. The Act requires that local service, which was previously operated **as** a monopoly overseen by the several states, be opened to competition according to standards established by federal law. Under the Act, the incumbent local telephone service carriers must negotiate **or** arbitrate agreements with competitive local carriers, allowing entering carriers either to connect their equipment to the existing network or to purchase or lease elements and services of the existing network. The terms, rates, and conditions of such arrangements are set forth in interconnection agreements established between the carriers. The state utility commissions are empowered, but not required, to review and give **final** approval to interconnection agreements to ensure that they comport with federal law.

****

Prior to 1996, local telephone service operated as a monopoly, subject to exclusive regulation by the several states. In each local service **area,** the states would grant a monopoly franchise to one local exchange carrier, which owned the facilities and equipment necessary to provide telephone service. ***See*** AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366. 370, 142 L. Ed. 2d 834. 119 **S.** Ct. 721 (1999) (Iowa Utils. I). With the Telecommunications Act of 1996, Congress fundamentally restructured local telephone markets by eliminating state-granted local service monopolies. ***See id.*** The Act preempts exclusive state regulation of local monopolies in favor of the competitive scheme established in 47 U.S.C. §§ 251 and 252. ***See*** AT&T Communications v. Bellsouth Telecomm. Inc., 238 F.3d 636, 641 (5th Cir.), reh'g en banc denied, 252 F.3d 437 (5th Cir. 2001) (Bellsouth).

The Act essentially requires incumbent local exchange carriers (ILECs) to share their networks and services with competitors seeking entry into the local service market. See MCI Telecornrn. Corp. v. Illinois Bell Tel. Co.. 222 F.3d 323, 328 (7th Cir. 2000), cert. denied, 531 U.S. 1132, 121 S. Ct. 896, 148 L. Ed. 2d 802 (2001). Under the Act, a new entrant to the local telephone market, known as a competitive local exchange carrier (CLEC), is able to compete with an ILEC without having to bear the prohibitive cost of building its own telecommunications network. ***See id.***

PROCEDURAL HISTORY

After negotiations in which the parties were unable to reach agreement on **all** issues, on June 2,2002, Global NAPs, Inc. ("Global"), filed its verified petition for arbitration pursuant to section 252(b)(1) of the **96** Act. On July 1, 2002, Verizon New Jersey, Inc. ("Verizon") filed its response to Global's verified petition. Pursuant to the procedures adopted on August 15, 1996, by BPU in its Telecommunications Order, Docket No. TX96070540, Alvin Weiss, **Esq.,** was appointed as arbitrator to make recommendations to the BPU on the open issues in dispute between Global and Verizon.

On July 12,2002 a prehearing conference was held by **the** arbitrator with both parties. At the prehearing conference, the procedure to **be** followed in the arbitration **was** established.

On August 5, 2002 Global filed a motion for partial summary judgment on four issues related to intercarrier compensation. Verizon responded to the motion on August 15,2002.

On August 13, 2002 Global prefiled the direct testimony of William Jerry Rooney and Lee L. Selwyn. On August 13, 2002 Verizon prefiled the direct testimony of Donald Albert, P. D'Amico, Karen Fleming, William Monsel, Jonathan Smith and Harold West, III. ***On*** August 20, 2002 Verizon prefiled rebuttal testimony of Kevin C. Collins, Karen Fleming, Jonathan **B.** Smith and Harold E. West.

On August **23,** 2002 Verizon filed motions to **strike** portions of **the** testimonies of Global's witnesses William J. Rooney and Lee L. Selwyn.

On August 28, 2002 the arbitration hearing took place. As arbitrator, I heard Global's motion for partial *summary* judgment and after listening to the argument, reserved decision pending the outcome of the testimony to be heard. On Verizon's motion to strike portions of the

testimony of William J. Rooney, after hearing argument, I granted Verizon's motion. On Verizon's motion to strike three portions of Dr. Selwyn's testimony, I made the following ruling:

On Issue No. 1 where Verizon moved to strike what Dr. Selwyn put forth as his cost analysis of Verizon's increased transportation operation as a result of Global's interconnection with Verizon, I denied the motion.

On Issue No. 2 relating to the history regarding reciprocal compensation, I denied the motion.

On Issue No. 3 where Dr. Selwyn's testimony addressed reciprocal compensation that he thought should be in effect if the ISP Remand Order was not effective, I granted the motion on the grounds that I was bound by the ISP Remand Order.

After disposing of the pending motions, I then heard oral testimony from Dr. Selwyn, Peter D'Amico, Kevin C. Collins and Harold West. In addition, the prefiled testimony, to the extent not covered by my granting portions of Verizon's motions to strike, was admitted into evidence.

After hearing all the testimony, the hearing was closed and a schedule for filing post hearing submissions was adopted. On October 3, 2002 Global and Verizon filed their post hearing briefs. On October 15,2002 Global and Verizon filed their reply briefs.

The issues raised in this arbitration have been raised before in other jurisdictions. In many of the proceedings in the other jurisdictions, Global and Verizon were the parties involved. Because I recognized that my recommendations may be appealed or challenged by either or both of the parties when the Board hears this matter, I am not going to repeat all the contentions of the parties with respect to each issue because those very same contentions will be presented to the

BPU. Rather, I will attempt to streamline the decision by setting forth each of the issues and my recommendations with respect to those issues.

ISSUE 1. SHOULD EITHER PARTY BE REQUIRED TO INSTALL MORE THAN ONE POINT OF INTERCONNECTION PER LATA.

The first issue concerns whether Global may be required to physically interconnect with Verizon at more than one point on Verizon's existing network. As recognized by Verizon, the 96 Act permits a CLEC to interconnect with an ILCEC at any single, technically feasible point in the ILCEC's network. Section 252(c)(2)(B) of the 96 Act.

The concern of Verizon is that the contract language proposed by Global could be construed in a manner inconsistent with applicable law and rules of the F.C.C. Thus, under Global's proposed Glossary §2.66, POI is defined as the meaning stated in 47 CFR §51.319(b) which is the F.C.C.'s rule defining network interface device. In addition, Global's proposed Interconnection Attachment 52.1.1 does not explicitly limit Global's choice of the POI to any "technically feasible point within Verizon's network", which is required by Section 251(c)(2) of the 96 Act.

Arbitrator's Recommendation

I recommend that the language in Section 2.67, POI (Point of Intersection), and Interconnection Attachment Section 2.1 proposed by Verizon be adopted

ISSUE 2. SHOULD EACH PARTY BE RESPONSIBLE FOR THE COSTS ASSOCIATED WITH TRANSPORTING TELECOMMUNICATIONS TRAFFIC TO THE SINGLE POI.

Global asserts that Verizon should be responsible for the costs associated with transporting traffic on its network to the Global point of interconnection ("POI"). In support of its position, Global argues that federal law prohibits the imposition of originating charges or

access charges on reciprocal compensation traffic and, that as a matter of public policy, each party should be responsible for the costs associated with transporting its own traffic to the POI. Any increase in cost to Verizon for having to transport its own traffic to the POI would be ***de minimus***.

Verizon, on the other hand, argues that Global should be financially responsible for the additional transportation costs beyond Verizon's local calling area to the single POI. Verizon's proposal is premised on Global's choice to deploy fewer switches and relying more on transport on Verizon's network to serve Global's customers. Under Verizon's proposal, it would establish virtual geographically relevant interconnection point ("VGRIP") which differentiates between the physical POI Global selects and a point on the network where financial responsibility for the call changes hands. Verizon refers to this demarcation of financial responsibility as the interconnection point ("IF"'). Under Verizon's VGRIP proposal, Global may choose to establish an IF' or it may take financial responsibility for the traffic at the "virtual" IF' location while still using Verizon's network to take the traffic all the way to the POI.

With the first option, Global must choose the location of its IPs. Global IPs must be geographically relevant to the telephone numbers it chooses to assign to its customers, but Global has several options. The Global IPs may be located at either (i) a Verizon tandem wire center in a multi-tandem **LATA,** or (ii) at a Verizon end office that will serve **as** the IF' for that local calling area. Once Global has selected the location and configuration of its IP, Global has the choice to (i) purchase transport from Verizon, (ii) self-provision the transport to its switch, or (iii) purchase transport from a third party.

Under the second "virtual" IF' VGRIP option, if Global chooses not to establish an IP at the Verizon tandem or at the Verizon end office at which Global collocates, the financial

demarcation point—in this case a "virtual IP"—would be at the end office serving the Verizon customer who places the call. Verizon **will** then transport this traffic from the Verizon customer to the POI. Financial responsibility will still transfer to Global at the "virtual" IP. Global must pay Verizon for the transport from the virtual IP to the POI.

As pointed out by both parties, this issue has been dealt with by other Boards and has resulted in inconsistent decisions. Although the FCC has requested comment on this question, to date it has not promulgated any regulation dealing with this issue.

Arbitrator's Recommendation

The 96 Act requires **an** ILEC to provide for interconnection "at any technically feasible point within the carrier's network" that is "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, **or** any other party to which the carrier provides interconnection" "on rates, terms and conditions that are just reasonable and nondiscriminatory". Since one of the purposes of the **96** Act was to encourage competition, and in the absence of any definitive ruling by the FCC. Global is entitled to choose a single POI in each LATA at any technically feasible point. The adoption of Verizon's proposal would in effect constitute a penalty upon Global for electing a single POI, thus, increasing the cost of the single POI to Global and making it more difficult for a CLEC to enter the market of an ILEC. I did not find any convincing evidence that the cost of requiring Verizon and Global to be responsible financially for the traffic on its side of the POI would be more than de minimus.

I recommend that the language proposed by Verizon in section 2.46 and the language proposed by Global in section 7.1, 7.1.1.1 and 7.1.1.2 of the Interconnection Attachment be adopted

ISSUE **3.** SHOULD VERIZON'S LOCAL CALLING AREA BOUNDARIES BE IMPOSED ON GLOBAL, OR MAY GLOBAL BROADLY **DEFINE ITS** OWN LOCAL CALLING AREAS.

Global asserts that it should be permitted to broadly define its own local calling areas without imposition of access charges. It asserts that LATA-wide local calling areas imposed no additional costs on the ILEC outside of origination charges. It is Verizon's position that in New Jersey the BPU has approved local calling areas in determining what traffic is subject to toll or access charges. Verizon further states that Global is free to define its "local calling area" whether that be LATA-wide or something smaller but is not free to alter intercarrier compensation by its unilateral declaration of its marketing plan

Arbitrator's Recommendation

I recommend that Global be allowed to establish state wide **or** LATA-wide local calling areas for its customers. However, regardless of the retail calling options Global offers its customers, I see no reason to change the existing way in which local calling areas have been defined by the BPU with the resulting intercarrier compensation based upon Verizon's current local calling areas. A carrier access charge should apply to inter LATA traffic for traffic across the boundaries of Verizon's local calling areas. **To** rule otherwise could amount to Verizon subsidizing Global's operations.

I recommend the language proposed by Verizon in section 2.34, 2.57, 2.76, 2.84 and **2.92** of its Glossary and sections **6.2, 7.3.3** and **7.3.4** of the Interconnection Attachment be adopted; I further recommend that language proposed by Global in section **2.47** Global's Interconnection Attachment be adopted

ISSUE 4. CAN GLOBAL ASSIGN ITS CUSTOMERS NXX CODES THAT ARE "HOMED IN A CENTRAL OFFICE SWITCH OUTSIDE THE LOCAL CALLING AREA IN WHICH THE CUSTOMER RESIDES.

Virtual NXX is a technology enabling carriers to establish numbers perceived by and billed to customers as local calls, regardless of the actual location of the calling center. Global asserts that linking NXXs to physical locations has been superceded by technology. Further, treating virtual NXX service differently than Verizon's FX traffic is inconsistent with Verizon's own practice of categorizing FX traffic as local. Presently, when a Verizon customer calls Verizon's FX customer, the calling party does not pay a toll charge; the customer pays the flat local rate. In addition, Global asserts that there is no ready available information that tells a carrier the physical location of a calling or called party and, therefore, there is no reason to believe that Verizon could readily obtain the information on which it proposes to rely in order to impose charges. Further, Global asserts that requiring it to pay an access charge if it employs virtual NXX to provide FX-like service would make it economically impossible for it to provide this service.

Verizon asserts that Global's proposed use of Virtual NXX assignments is a substitute toll free calling service and creates a situation in which a Verizon end user can call a Global customer outside the Verizon end user's local calling zone without paying a toll charge. This, Verizon asserts, effectively expands the Verizon end user's local calling area without providing appropriate compensation to Verizon for the transport outside the local calling area. Further, Verizon asserts that adoption of Global's proposal would make such traffic subject to reciprocal compensation based on the telephone number Global chooses to assign rather than the actual geographic end point.

Arbitrator's Recommendation

As previously indicated, one of the purposes of the 96 Act was to increase competition in telecommunications. The fact that Verizon would lose revenues by allowing Global to assigning Virtual NXXs in the manner requested forms no basis for denying the requested relief. Therefore, I find Global should be permitted to assign customers NXX codes that are homed in a central office switch outside the local calling area in which the customer resides.

Permitting Global the right to assign Virtual NXXs to customers will result in Verizon collecting no toll revenue nor access charges. A Virtual NXX number assignment is a service provided by the customer's carrier and should not be subsidized by a competing LEC. Under the FCC's rules, which reflect the requirements of Section 251(g) of the 96 Act, reciprocal compensation does not apply to "interstate or intrastate exchange access, information access, or exchange services for such access." Each of these three exempted categories of service have in common the fact that they relate to "the provision of services in connection with interexchange services." In the ISP Remand Order, the FCC's discussion of this exemption shows that it was intended to encompass "calls that travel to points—both interstate and intrastate—beyond the local exchange." Therefore, a Virtual NXX number assignment is not subject to reciprocal compensation. Reciprocal compensation is not due on calls placed to Virtual NXX numbers as the calls do not terminate within the same local calling area in which the call originated.

From the testimony of Verizon witness West, I find that traffic studies are commonly used in the industry to harmonize the law's requirement to base intercarrier compensation on actual geographic end points with the practical difficulties of doing so. I, therefore, recommend to the BPU that Global and other CLECs cooperate with Verizon, whether through traffic studies

or otherwise in developing a way for the parties to bill intercarrier compensation that is based on actual endpoints of the traffic.

See recommendations for Issue 3 above for my recommendations as to the language to be adopted.

ISSUE 5. IS IT REASONABLE FOR THE PARTIES TO INCLUDE LANGUAGE IN THE AGREEMENT THAT EXPRESSLY REQUIRES THE PARTIES TO RENEGOTIATE RECIPROCAL COMPENSATION OBLIGATIONS IF CURRENT LAW IS OVERTURNED OR OTHERWISE REVISED.

Global asserts that the language proposed by **Verizon** is inadequate on the issue of Global's right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised.

Arbitrator's Recommendation

I find that the specific contract language contained in sections 4.5 and 4.6 of Verizon's contract language clearly addresses Global's right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised.

I recommend the adoption of the language proposed by Verizon in sections 4.5 and 4.6 of the general Terms and Conditions and the language proposed by Global in section 2.74 its Glossary

ISSUE 6. WHETHER TWO WAY TRUNKING IS AVAILABLE TO GLOBAL AT GLOBAL'S REQUEST.

Verizon agrees that Global has the option to decide whether it wants to use one-way or two-way trunks for interconnection. However, **Verizon** asserts that the parties must come to an understanding about the operational and engineering aspects of the two-way trunks between them and that Global should not be permitted to dictate those case specific terms to **Verizon.** If

Global opts to use two-way trunks, its action will affect Verizon as both carriers will be sending traffic over the same ***trunk.*** This will present operational issues for Verizon's own network and therefore require both parties to participate in resolving how this impact is assessed and handled.

Arbitrator's Recommendation

I recommend that Verizon's proposed language in Sections **2.2.3, 2.2.4,** and **2.4.1-2.4.3** and **2.4.10** of the Interconnection Attachment which identify operational areas that the parties must address to achieve a workable interconnection arrangement be adopted. The adoption of this language will not interfere with Global's decision as to whether to use two-way trunks.

ISSUE **7.** **IS** IT APPROPRIATE TO INCORPORATE BY REFERENCE OTHER DOCUMENTS, INCLUDING TARIFFS, INTO THE AGREEMENT INSTEAD OF FULLY SETTING OUT THOSE PROVISIONS IN THE AGREEMENT.

Global argues that it is inappropriate to incorporate by reference other documents, including tariffs into the agreement, instead of fully setting out those provisions in the agreement. It objects to the contract language proposed by Verizon because this would give Verizon the ability to change the terms and conditions of the interconnection agreement without Global's assent.

Verizon asserts that the inclusion of the proposed tariff references would not give it the unilateral ability to affect material terms of the interconnection agreement and that under Verizon's proposal, the parties would rely on the appropriate Verizon tariff for applicable price or rates. Verizon further asserts that "when there is a conflict between the terms and conditions of the tariff and those of the interconnection agreement, the terms and conditions in the interconnection agreement would supercede those contained in the tariff. Thus, tariff terms and

conditions will only supplement the terms and conditions of the interconnection agreement; they will not alter the interconnection agreement's terms and conditions.

Arbitrator's Recommendation

I recommend that Global's objection to the incorporation by reference of other documents, including tariffs into the agreement, be rejected. Global's proposed contract 'changes would "freeze" any current tariff prices in its favor. If the rates contained in the interconnection agreement give Global an advantage, it would exploit those rates but if new generally applicable rates were lower, Global would likely claim that it was entitled to purchase service out of the tariff, notwithstanding the existence of the agreement. Any proposed rate change by Verizon would be subject to the process of regulatory review. Global would have the opportunity to appear and object to any proposed rate changes by Verizon. However, to ensure that Global has the opportunity to make any objections to any proposed tariff changes by Verizon, I recommend that Verizon give direct notice to Global of proposed tariff changes filed with BPU..

I recommend the adoption of the language proposed by Verizon in sections 1, 4.7, 6.5, 6.9, 41.1 and 47; section 2.74 of its Glossary; section 9 if its Additional Services; sections 1, 2.1.3.3, 2.1.4, 2.1.6, 2.3.1.3, 2.4.1, 5.4, 81. to 8.4, 10.1 and 10.6 of the Interconnection Attachment; sections 1, 2.1 and 2.2.2 of Resale; sections 1.1, 1.4.1, 1.8, 4.3, 4.7.2, 6.1.11, 6.2.1, 6.2.6 and 12.11 of Unbundled Network Elements; section 1 of Collocation; and sections 1.5 and 2.2.2 of Pricing Attachment.

1 further recommend the adoption of the language proposed by Global in sections 2.1.1, 2.1.2.8.5 and 9.2 of the Interconnection Attachment.

ISSUE 8. SHOULD THE INTERCONNECTION AGREEMENT REQUIRE GLOBAL TO OBTAIN EXCESS LIABILITY INSURANCE COVERAGE OF TEN MILLION DOLLARS AND REQUIRE GLOBAL TO ADOPT SPECIFIED POLICY FORMS.

Global asserts that Verizon proposes burdensome insurance limits. Verizon's response is that it is reasonable for it to **seek** protection of its **network** personnel or other assets in the event Global has insufficient financial resources. Verizon points out that Global and it operate in a highly volatile industry and that either party could be held jointly **or** severally liable for the negligent or wrongful acts of the other. Under the interconnection agreement, Global will have the ability to collocate at a Verizon facility which will increase Verizon's risks and exposure to loss in many ways.

Arbitrator's Recommendation

This issue has been dealt with other boards in other jurisdictions. With the exception of proceedings before the California Commission involving PacBell and Global, all other boards have found the insurance requirements proposed by Venzon to be reasonable and to be normal within industry standards. No evidence was presented before me which would lead me to conclude that the insurance requested by **Verizon** should not be adopted.

I recommend that the Section 21 of the General Terms and Conditions proposed by Verizon be adopted in its entirety

ISSUE 9. SHOULD THE INTERCONNECTION AGREEMENT INCLUDE LANGUAGE THAT ALLOWS VERIZON TO AUDIT GLOBAL'S "BOOKS, RECORDS, DOCUMENTS, FACILITIES AND SYSTEMS."

Global objects to the contract language proposed by Verizon which would permit an audit by an independent certified public accountant selected and paid by the auditing party, who are also acceptable to the audited party, of the records, documents, employees, books, facilities and systems "necessary to assess **the** accuracy of the Audited Party's bills'' on the ground that

much of the material contained in these records is competitively sensitive and that if Global were compelled to provide Verizon with access to redacted records, the costs of "sanitizing" those records would be prohibitive.

Arbitrator's Recommendation

As pointed out by Verizon, the proposed billing audits would be conducted by independent certified public accountants, not by it, with appropriate safeguards against disclosure of competitively sensitive information. The purpose of the audit is to obtain information necessary to verify bills and to ensure that rates are being applied appropriately. In addition, the audit provisions proposed by Verizon only allows audits once a year unless a previous audit revealed discrepancies and then no more than once a quarter. Billing audits are appropriate particularly between competitors and the participation of independent certified public accountants will assure the confidentiality of commercial data.

I recommend the language proposed by Verizon in section 7 of General terms and Conditions; section 8.5.4 of Additional Service Attachment; and sections 6.3 and 10.13 of the Interconnection Attachment be adopted.

ISSUE 10. SHOULD VERIZON BE PERMITTED TO COLLOCATE AT GLOBAL'S FACILITIES IN ORDER TO INTERCONNECT WITH GLOBAL.

This is a supplemental issue raised by Verizon. Although Global had the opportunity to respond to this issue, it failed to address it in either its posthearing initial brief or reply brief.

Verizon's position is that "reciprocal collocation" provides it with options for interconnecting with Global. Verizon argues that if it is not able to bring its interconnection facilities to Global, Global could force Verizon to hire Global as a transport vendor and Verizon would have no way to limit interconnection costs. Verizon recognizes that under the 96 Act a

CLEC does not have the **duty** to offer collocation to an ILEC but argues that nothing prohibits the Arbitrator from allowing **Verizon** to interconnect with Global via a collocation arrangement at Global's premises. In support for its position, **Verizon** cites to the decisions by the New **York,** Ohio and Illinois Commissions which have ruled in **Verizon's** favor on this issue.

Arbitrator's Recommendation

It appears reasonable to require Global to allow collocation by Verizon, subject to the established restrictions as to technical feasibility and space. This will give **Verizon** comparable interconnection options to the options that Verizon offers to Global. As pointed out by the Arbitrator in proceedings by Verizon and Global before the Pennsylvania Public utility commission:

> There is nothing in the [96] Act prohibiting the Commission from allowing Verizon to interconnect with the CLECs (GNAPs in this case) via a collocation Arrangement at their premises. As aforesaid, it ensures fair terms for Interconnection and provides Verizon an opportunity to evaluate Whether it is more cost-effective to purchase transport from GNAPs Or build its own facilities.

I recommend that the language proposed by **Verizon** in section 2.1.5 of the Interconnection Attachment be adopted

SUPPLEMENTAL ISSUE 11. THE PARTIES' **AGREEMENT** SHOULD RECOGNIZE APPLICABLE LAW.

Verizon's proposed General Terms and Conditions, Section 4.7 provides that when a change in law is effective, the parties must implement that law at that time. Global's proposed language would require the parties to wait until all avenues for appeal have been exhausted before the applicable law becomes effective.

Arbitrator's Recommendation

In the absence of any stay, the parties must recognize any change in law on its effective date. I recommend the language proposed by Verizon in section **4.7** of the General Terms and Conditions be **adopted.**

SWPLEMENTAL ISSUE **12.** GLOBAL **IS ONLY** PERMITTED ACCESS TO UNEs THAT HAD BEEN ORDERED UNBUNDLED AND TO VERIZON'S EXISTING NETWORK.

Verizon asserts that its proposed General Terms and Conditions, Section **42,** is necessary to (1) memorialize Verizon's **right** to upgrade and maintain its network, **(2)** ensure that Global does not force Verizon to unbundle its network absent a requirement to do **so,** and **(3)** ***make*** Global financially responsible for interconnecting with Verizon's network.

Global proposes contract language that would effectively give it access to "all" of Verizon's **"next** generation technology." Global's General Terms and Conditions, Section **42.**

Arbitrator's Recommendation

I find Global's language to be vague and ambiguous. I find that Verizon's proposed General Terms and Conditions, Section **47,** more than meet its obligations to Global and therefore recommend its adoption.

February 6, 2003

ALVIN WEISS
ARBITRATOR.